



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

July 18, 2016

Memorandum for: Deputy Commissioner, Trials

Re: **Lieutenant Richard Vetrano**
Tax Registry No. 921839
Narcotics Borough Bronx
Disciplinary Case No. 2015-13781

Detective Thomas Woods
Tax Registry No. 923384
Narcotics Borough Bronx
Disciplinary Case No. 2015-13782

The above named members of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on February 9 and 10, 2016, charged with the following:

DISCIPLINARY CASE NO. 2015-13781

1. Said Lieutenant Richard Vetrano on or about August 18, 2014, at approximately 1500 hours while assigned to the Narcotics Borough Bronx and on duty, in the vicinity of [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched the vehicle driven by Person A without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

DISCIPLINARY CASE NO. 2015-13782

1. Said Detective Thomas Woods, on or about August 18, 2014, at approximately 1500 hours while assigned to the Narcotics Borough Bronx and on duty, in the vicinity of [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched the vehicle driven by Person A without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

STREET BEACH, ...
BRIAN ...

2016 JUL 19 P 27

1100000

2. Said Detective Thomas Woods, on or about August 18, 2014, at approximately 1500 hours while assigned to the Narcotics Borough Bronx and on duty, in the vicinity of [REDACTED], abused his authority in that he frisked Person B without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2

STOP AND FRISK


3. Said Detective Thomas Woods, on or about August 18, 2014, at approximately 1500 hours while assigned to the Narcotics Borough Bronx and on duty, in the vicinity of [REDACTED], abused his authority in that he searched Person B without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 3

STOP AND FRISK

In a Memorandum dated March 28, 2016, Assistant Deputy Commissioner Jeff S. Adler found Lieutenant Richard Vetrano Guilty of the sole Specification in Disciplinary Case No. 2015-13781, and found Detective Thomas Woods Guilty of Specification Nos. 1, 2 and 3 in Disciplinary Case No. 2015-13782. Having read the Memorandum and analyzed the facts of this matter, I approve the findings and the penalty for Lieutenant Vetrano, and I approve the findings but disapprove the penalty for Detective Woods.

I have considered the totality of the issues and circumstances concerning the disciplinary case against Detective Woods, and deem that a lesser penalty is warranted. Detective Woods was working under the supervision of Lieutenant Vetrano throughout the incident. In consideration of Detective Woods' role in the actions which gave rise to this disciplinary matter, and considering his overall record with the Department, I have determined that a lesser penalty than that which was recommended by Assistant Deputy Commissioner Adler is warranted. Therefore, Detective Woods is to forfeit two (2) vacation days, as a disciplinary penalty.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

March 28, 2016

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Richard Vetrano
Tax Registry No. 921839
Narcotics Borough Bronx
Disciplinary Case No. 2015-13781

Detective Thomas Woods
Tax Registry No. 923384
Narcotics Borough Bronx
Disciplinary Case No. 2015-13782

Charges and Specifications:

Disciplinary Case No. 2015-13781

1. Said Lieutenant Richard Vetrano on or about August 18, 2014, at approximately 1500 hours while assigned to the Narcotics Borough Bronx and on duty, in the vicinity of [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched the vehicle driven by Person A without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED
CONDUCT

Disciplinary Case No. 2015-13782

1. Said Detective Thomas Woods, on or about August 18, 2014, at approximately 1500 hours while assigned to the Narcotics Borough Bronx and on duty, in the vicinity of [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched the vehicle driven by Person A without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED
CONDUCT

2. Said Detective Thomas Woods, on or about August 18, 2014, at approximately 1500 hours while assigned to the Narcotics Borough Bronx and on duty, in the vicinity of [REDACTED], abused his authority in that he frisked Person B without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 STOP AND FRISK

3. Said Detective Thomas Woods, on or about August 18, 2014, at approximately 1500 hours while assigned to the Narcotics Borough Bronx and on duty, in the vicinity of [REDACTED], abused his authority as a member of the New York City Police Department, in that he searched Person B without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 3 – STOP AND FRISK

Appearances:

For CCRB-APU: Cindy Horowitz, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For Respondents: Philip Karasyk, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

Hearing Dates:

February 9 and 10, 2016

Decision:

Respondent Vetrano: Specification 1: Guilty

Respondent Woods: Specifications 1-3: Guilty

Trial Commissioner:

ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on February 9 and 10, 2016. Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. CCRB called Jude Julien as a witness. Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondents Vetrano and Woods guilty of searching a vehicle without sufficient legal authority, and also find Respondent Woods guilty of conducting a frisk and a search without sufficient legal authority.

FINDINGS AND ANALYSIS

On August 18, 2014, at about 1500 hours, Respondents observed a sedan with a broken brake light. Respondents put on their lights and sirens and pulled over the vehicle near the intersection of [REDACTED]. Respondents and a third member of the service, Detective Guzman, approached the sedan, which was occupied by driver Person A and front-seat passenger Person B. At Respondents' request, the occupants exited the vehicle.

Neither occupant of the sedan appeared to testify at the trial. Indeed, each of them specifically informed CCRB that they did not want to pursue charges or cooperate with the investigation. Respondents offered into evidence recorded statements, and the accompanying transcripts, of phone calls where Person A and Person B told a CCRB investigator that they did not want to be involved in this investigation. (Resp. Exs. A, B, C, and D) They each made clear that they had no interest in pursuing the matter, and were not coerced in any way into taking that position.

Instead, CCRB presented the testimony of Jude Julien, a bystander who observed and recorded most of the incident. Julien, a chemistry teacher, testified that he was on his way home when he observed the sedan already pulled over; he did not see the stop itself, and had no information as to the basis for the stop. (Tr. 23, 37) Julien stated that he used his phone to record

the interaction between the police and the occupants; that recording was admitted into evidence. (CCRB Ex. 1)

Julien testified that while the occupants were standing at the rear of the sedan, Respondent Vetrano leaned into the passenger side of the car and conducted a search of the interior, moving items around in the process. (Tr. 24-26) Meanwhile, Respondent Woods frisked and searched Person B, reaching into Person B's pants pocket and removing a cell phone. (Tr. 24) After Respondent Vetrano completed his search of the vehicle, Respondent Woods also searched inside the sedan from the driver's side, also moving items around. (Tr. 26-27) After the search, no citations were issued, and the occupants were permitted to return to the car and drive off. The entire encounter appeared calm, as the officers treated the occupants courteously. (Tr. 36-37, 40-42)

The video footage essentially corroborates Julien's account. The video shows that with both occupants out of the car, Respondent Vetrano leans into the passenger side and searches inside the vehicle for about two minutes and forty-three seconds. The video also shows Respondent Woods patting down Person B and reaching into his pants pocket from where he removes a phone. Respondent Woods also pats down Person B's legs and ankle areas, spending about thirty-four seconds on the entire frisk and search. There also is footage of Respondent Woods then spending about one minute and twenty-six seconds searching inside the sedan from the driver's side. Nothing appears to have been recovered from the sedan.

Respondent Vetrano acknowledged that he searched the vehicle, and offered testimony explaining his conduct. The lieutenant testified that he was sitting in the front passenger seat of his vehicle when the sedan was pulled over in a high-crime area of the Bronx where there had been recent shootings. After the sedan came to a stop, Respondent Vetrano briefly observed

Person B through the sedan's side-view mirror; Person B appeared to be looking back at Respondent Vetrano through the mirror as well. According to Respondent Vetrano, Person B suddenly lowered his seat all the way back, and disappeared from the lieutenant's view. (Tr. 48-49) As a result of Person B's unusual behavior, Respondent Vetrano's "level of suspicion rose up dramatically." (Tr. 49) Once the occupants were removed from the vehicle, Respondent Vetrano, suspecting that Person B may have hidden a weapon, searched the areas of the car where he believed Person B could have reached and stashed a weapon. (Tr. 51-52, 64) No weapons or contraband were recovered. (Tr. 65) Person B apologized for putting the seat back, but never explained why he did so. (Tr. 52- 53) Person A was warned and admonished regarding the brake light, but no summons was issued. (Tr. 56)

Similarly, Respondent Woods acknowledged conducting a frisk and search of Person B, and searching the sedan. Like Respondent Vetrano, Respondent Woods also noticed how Person B's face abruptly slid from view, and so "the threat level went up." (Tr. 72) The detective frisked Person B, believing that from violence in the neighborhood and Person B's behavior there was a "very strong likelihood" he had a weapon. (Tr. 73, 78-79) Respondent Woods explained that it was hard to see if there was a bulge in the waistband of Person B's sweatpants, so he patted that area with his hands and felt a "hard object" in the right front pocket. The detective reached into the pocket and removed the object, which turned out to be a phone. (Tr. 73) He also frisked down Person B's legs and ankle area. (Tr. 74) The detective acknowledged that he then searched the car from the driver's side, from a "different perspective" than his partner. (Tr. 81) No weapons or contraband were recovered. (Tr. 85)

Both Respondents testified that at some point during the incident, Person A noticed Julien recording them with his phone and told him to stop. (Tr. 54, 74-75) Even though that portion of

the incident was not contained on the video footage in evidence, and Julien claimed he did not recall hearing Person A tell him to stop recording. Person A did confirm it in one of her phone interviews (Resp. Ex. B, p. 2), and I credit Respondents' testimony that it did happen. Both Respondents came across as consistent and candid throughout their testimony.

There is no dispute that Respondents did each search the vehicle, and that Respondent Woods did frisk and search Person B. The question is whether Respondents' conduct was reasonable under the totality of the circumstances that they faced.

This tribunal is mindful of the heightened dangers faced by police during traffic stops, and so the act of asking the occupants to step out of the car was proper as a precautionary measure. See *People v. Robinson*, 74 NY2d 773 (1989). However, it was not reasonable for Respondent Woods to frisk and search Person B. It is well-settled that an officer may conduct a protective frisk of a detainee where the officer "reasonably suspects" that he is in danger of physical injury by virtue of the detainee being armed. See Patrol Guide section 212-11(2) (effective 8/1/13), tracking the language of *People v. DeBour*, 40 NY2d 210 (1976). Here, Respondent Woods argues that his frisk of Person B was reasonable based on the manner in which Person B slid out of sight in the car after being pulled over by police, and based on recent violence in the neighborhood. This tribunal disagrees. Person B's behavior, though unusual, did not rise to the level of creating a reasonable suspicion that Person B was armed and dangerous. Merely observing that the passenger moved out of view inside the car did not give the detective a reasonable basis for believing that Person B possessed a weapon. Respondent Woods conducted a frisk without sufficient legal authority, and I find him guilty of Specification 2. Since the initial frisk was conducted without sufficient legal authority, the subsequent search for a weapon also was improper. Additionally, even after feeling an object inside Person B's

pants, Respondent Woods still did not have a reasonable basis for searching Person B. There was no indication that the "hard object" inside Person B's pants pocket was a weapon, as opposed to an innocuous object such as a phone. See *Matter of Darryl C.*, 98 A.D.3d 69 (1st Dept. 2012) It was not reasonable for Respondent Woods to reach inside Person B's pants pocket, and I find him guilty of Specification 3.

Similarly, it was not reasonable for Respondents to search the vehicle. As noted above, Respondents did not have a reasonable belief that there was a weapon inside the car. See *People v. Chann*, 221 AD2d 155 (1st Dept. 1995) (defendant's behavior prior to stop, looking away and slumping down, not sufficient to believe he was armed). Further, once Respondents had removed the occupants from the vehicle, there was no immediate threat posed to their safety from the contents of the sedan. Accordingly, I find both Respondents Vetrano and Woods guilty of searching the vehicle without sufficient legal authority.

PENALTY RECOMMENDATIONS

In order to determine appropriate penalties, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent Vetrano was appointed to the Department on July 1, 1998, Respondent Woods was appointed on August 31, 1998. Information from their personnel records that was considered in making these penalty recommendations is contained in the attached confidential memoranda.

CCRB recommends that Respondent Vetrano forfeit five (5) vacation days, and that Respondent Woods forfeit fifteen (15) vacation days. Those recommendations are excessive. Even though this tribunal has found misconduct on the part of each Respondent, it is apparent from the video footage that the stop of the vehicle was conducted in a calm and courteous

manner. The driver, Person A, confirmed this in her recorded phone interview, noting that the officers were not mean during the encounter and that they explained the reason for their actions.

Respondent Vetrano, who has a distinguished record with the Department, has been found guilty of only one specification, for conducting an automobile search without sufficient legal authority. In *Disciplinary Case No. 10805/13* (Mar. 6, 2015), a 20-year lieutenant with no disciplinary history forfeited three (3) vacation days. Taking into account the totality of circumstances here, including Respondent's strong record and the manner in which he conducted himself at the scene, I recommend that Respondent Vetrano forfeit two (2) vacation days as an appropriate penalty.

Respondent Woods has been found guilty of three specifications. On the one hand, he, too, conducted himself courteously during the encounter. However, Respondent Woods has a prior disciplinary history, with a recent case involving frisks and searches (*Disciplinary Case No. 12398/14* (June 22, 2015)). There, Respondent forfeited three (3) vacation days, a penalty consistent with comparable disciplinary cases. Under the totality of circumstances present here, I recommend that Respondent Woods forfeit six (6) vacation days as an appropriate penalty.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT RICHARD VETRANO
TAX REGISTRY NO. 921839
DISCIPLINARY CASE NO. 2015-13781

On his last three performance evaluations, Respondent Vetrano once received a 5.0 "Extremely Competent" and twice received a 4.0 "Highly Competent." He has been awarded 44 medals for Excellent Police Duty and nine medals for Meritorious Police Duty. [REDACTED]

From March 9, 2010 to August 30, 2011, Respondent Vetrano was placed on Level I Force Monitoring for having four force complaints in a two-year period. In 2013, Respondent was served with Charges and Specifications for participating in the stop of an individual without sufficient legal authority. However, upon the CCRB's motion, the charges were dismissed.

Jeff S Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE THOMAS WOODS
TAX REGISTRY NO. 923384
DISCIPLINARY CASE NO. 2015-13782

On his last three annual performance evaluations, Respondent Woods twice received an overall rating of 4.5 "Extremely Competent/Highly Competent" and once received an overall rating of 4.0 "Highly Competent." [REDACTED]

Beginning November 6, 2014, Respondent Woods was placed on Level I Force Monitoring, which remains ongoing, for having three or more CCRB complaints in one year.

Respondent Woods has been the subject of one prior adjudication. In 2015, Respondent Woods was found guilty of frisking and searching two individuals without sufficient legal authority. He forfeited three vacation days as a penalty.

Jeff S. Adler
Assistant Deputy Commissioner Trials